

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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April 30, 2003

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GSBCA 16016-RELO

In the Matter of JEFFREY D. VANCE

Jeffrey D. Vance, McCloud, CA, Claimant.

Tamara L. Hanan, Director, Financial Policy and Analysis, Forest Service, Department of Agriculture, Arlington, VA, appearing for Department of Agriculture.

**DeGRAFF**, Board Judge.

As a general rule, an agency cannot retroactively amend an employee's travel orders. In addition, we will not overturn an agency's determination to approve or to deny an extension of an employee's reimbursement period for temporary quarters subsistence expenses unless we find the determination was arbitrary, capricious, or contrary to law.

## Background

Jeffrey D. Vance is an employee of the United States Department of Agriculture (USDA). In mid-2002, he transferred from Virginia to a new permanent duty station in California. In connection with the transfer, Mr. Vance elected the fixed amount method for reimbursement of his temporary quarters subsistence expenses (TQSE) and USDA prepared his travel orders to authorize reimbursement by that method.

On June 20, 2002, Mr. Vance moved into temporary quarters in California. On June 30, he made an offer to purchase a building lot in the town of McCloud. Nearly two years earlier, on June 15, 2000, the California Regional Water Quality Control Board entered a cease and desist order against the McCloud Community Service District's wastewater collection system. The order imposed a moratorium on new sewer system connections. The district began replacing the sewer system, and the control board planned to lift the moratorium as each phase of the replacement project was completed. Apparently, Mr. Vance did not know about the moratorium when he made the offer to purchase his building lot.

On July 8, 2002, Mr. Vance asked USDA to amend his travel orders to authorize reimbursement by the actual expense method, instead of the fixed amount method. Also on July 8, Mr. Vance asked USDA to extend his TQSE period for an additional thirty days

because he had been unable to secure permanent quarters due to the building moratorium and the lack of available housing. Although Mr. Vance's direct supervisor within the Ranger District concurred in his request for an additional thirty days of TQSE, employees at the Ranger District level do not have the authority to approve a request for an extension of the TQSE period. Employees at the Forest Supervisor level have the authority to approve such requests, so long as the total TQSE period does not exceed sixty days. The financial manager for the Forest Supervisor approved Mr. Vance's request to authorize reimbursement of TQSE by the actual expense method and to extend the TQSE period to a total of sixty days, and amended Mr. Vance's travel orders accordingly on July 9, 2002.

On July 9, the seller accepted Mr. Vance's offer to purchase the building lot. On July 20, Mr. Vance paid a deposit for a manufactured house to place on the lot.

USDA reimbursed Mr. Vance for his first sixty days in temporary quarters, in accordance with the actual expense method of reimbursement. On August 12, 2002, Mr. Vance asked the financial manager for the Forest Supervisor for an extension to his TQSE period through November 2002. Mr. Vance explained that he needed the additional time in temporary quarters due to the building moratorium, the time it was taking to manufacture the home and to have it delivered, and the site preparation work required.<sup>1</sup> Although Mr. Vance's direct supervisor within the Ranger District agreed that he should get an extension, the District Ranger did not concur that Mr. Vance's TQSE period should be extended. A few days later, Mr. Vance's direct supervisor told him that the Forest Supervisor's office had denied his request. Requests for approval of a TQSE period in excess of sixty days had to be approved, if at all, by the Regional Forester's office. It does not appear that the Forest Supervisor's office forwarded Mr. Vance's August 12 request to the Regional Forester's office.

On August 20, Mr. Vance wrote to the financial manager for the Forest Supervisor and said he had recently learned his August 12 request for an extension of his TQSE period had been denied. Mr. Vance stated that he believed that the building moratorium in McCloud was a compelling reason for his continued stay in temporary quarters.

On September 13, 2002, Mr. Vance sent a letter to the financial manager for the Regional Forester. Two days earlier, that office had informed Mr. Vance that no one in the Forest Supervisor's office had the authority to approve an extension of the TQSE period beyond sixty days, and that the financial manager for the Regional Forester was the only official with such authority. Mr. Vance asked the financial manager for the Regional Forester to approve an extension of his TQSE period from August 20 through September 19, and to approve a second extension from September 20 through October 19, due to unanticipated problems that prevented him from occupying his new residence, such as the building moratorium. In mid-September, the McCloud Community Service District was

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<sup>1</sup> Between August 1 and September 12, Mr. Vance learned that because the lot was in a flood plain, he needed an engineering study before he could build on the lot; he needed to obtain a survey; and he needed to take several steps in order to finance the purchase of the manufactured house.

continuing to replace the sewer system and it anticipated that the moratorium on Mr. Vance's property would be lifted in late October or early November 2002.

On October 1, the financial manager for the Regional Forester informed Mr. Vance that his request for an extension would be denied and that he would be informed of this in writing. In two memoranda dated October 16 and 28, the financial manager for the Regional Forester explained that she was the official with the authority to approve an extension beyond the initial sixty day period. She explained that if an employee's supervisor denies a request for an extension of the TQSE period, the matter ends there unless the employee asks the Board to review the decision. If an employee's supervisor recommends approval of an extension, the supervisor is supposed to forward the request and the recommendation to the financial manager for the Regional Forester, who can approve or deny the request. In Mr. Vance's case, the financial manager for the Regional Forester received Mr. Vance's request, and a recommendation from the Forest Supervisor that the request not be approved. Because the financial manager for the Regional Forester concluded that the Forest Supervisor was not precluded from denying Mr. Vance's request, she returned the matter to the Forest Supervisor. The Forest Supervisor confirmed the denial of the request in a memorandum to Mr. Vance dated October 29. Mr. Vance subsequently asked the Board to review USDA's decision.

Mr. Vance believes the facts surrounding his attempt to secure permanent quarters show the existence of compelling circumstances that required him to remain in temporary quarters. USDA disagrees. It believes that Mr. Vance should have been aware of the moratorium on sewer connections that resulted from the cease and desist order, because the moratorium had been in effect for two years when he contracted to purchase the building lot. USDA also notes that the Forest Supervisor lacked the authority to change Mr. Vance's TQSE reimbursement method from fixed amount to actual expense. Mr. Vance contends that this change was properly approved according to current regulations. As a proposed resolution of this matter, USDA offered to extend Mr. Vance's TQSE period by an additional thirty days. Mr. Vance, however, rejected this proposal.

### Discussion

When an agency, in the interest of the Government, transfers an employee from one permanent duty station to another, the agency may reimburse the employee for the subsistence expenses the employee incurs while occupying temporary quarters. 5 U.S.C. § 5724a(a)(3) (2000); 41 CFR pt. 302-6 (2002). If an agency decides to reimburse an employee for TQSE, it can give the employee the option of being reimbursed in accordance with either the fixed amount method or the actual expense method. The fixed amount method provides an employee with a fixed amount for up to thirty days, regardless of the employee's actual expenses. If TQSE is reimbursed according to the fixed amount method, the agency is prohibited from making any extensions to the TQSE period and the employee will receive no additional reimbursement if the fixed amount does not cover his TQSE. 41 CFR 302-6.11, -6.200, -6.202, -6.304. The actual expense method provides an employee with reimbursement for his or her actual expenses, within certain limits, for up to sixty days. If TQSE is reimbursed according to the actual expense method, the agency may extend the TQSE period for up to a maximum of 120 days, if the agency determines there is a compelling reason for the employee to continue to occupy temporary quarters after sixty

days. A compelling reason is an event that is beyond the employee's control and that is acceptable to the agency. Examples include being unable to occupy a permanent residence due to unanticipated problems, such as a delay in settlement on the permanent residence or a short-term delay in construction. 41 CFR 302-6.100, -6.104, -6.105.

USDA erred when it amended Mr. Vance's travel orders so that he could be reimbursed by the actual expense method instead of the originally authorized fixed amount method. The regulations discussed in the preceding paragraph provide that when an employee chooses the fixed amount method of reimbursement, "[t]he employee must live with the consequences of his or her choice, since no extensions beyond the maximum period are available, and no additional reimbursement is allowed." Samuel E. Jones, GSBCA 15770-RELO, 02-2 BCA ¶ 31,897. We concluded in Jones that when an employee elected the fixed amount method, his entitlement to reimbursement became fixed and the agency could not later amend his travel orders to authorize reimbursement according to the actual expense method. Our decision in Jones is consistent with the general rule that after an employee travels, an agency cannot amend the employee's travel orders to decrease or to increase the employee's benefits unless the orders were clearly erroneous, were in conflict with a law or regulation, or were contrary to the agency's definite intention when the orders were issued. Jones; Andre E. Long, GSBCA 14498-TRAV, 98-1 BCA ¶ 29,731. Mr. Vance's original travel orders were not clearly erroneous, were not contrary to any law or regulation, and were not inconsistent with the agency's definite intention when it issued the orders. Thus, after Mr. Vance completed his travel to his new duty station in California, USDA lacked the authority to amend his travel orders to increase his benefits by providing that he would be reimbursed by the actual expense method instead of the fixed amount method. USDA can either collect or waive any overpayment of TQSE.

Even if Mr. Vance's orders had appropriately authorized reimbursement of his TQSE according to the actual expense method, USDA was not required to approve an extension of the TQSE period. An authorizing official has considerable discretion to determine what constitutes a compelling reason for remaining in temporary quarters and whether to extend an employee's TQSE period. We will not overturn an agency's determination to approve or to deny an extension unless we find the determination was arbitrary, capricious, or contrary to law. Scott E. English, GSBCA 15650-RELO, 02-1 BCA ¶ 31,821. Here, the Forest Supervisor did not believe that the moratorium on sewer connections constituted a compelling reason for extending Mr. Vance's TQSE period. The regulations explain that a compelling reason is one beyond the employee's control, and Mr. Vance's decision to purchase a lot subject to the moratorium was certainly within his control. In addition, after he learned of the moratorium, his decision not to withdraw his purchase offer before it was accepted was also within his control. Thus, the agency reasonably determined that Mr. Vance's reason for needing additional time in temporary quarters was not a compelling reason, as that term is used in the regulations, that would justify extending his TQSE period. As Mr. Vance points out, the Forest Supervisor evaluated his request for an extension based upon an outdated provision of the regulations. Although review under that standard was improper, the error is immaterial because the agency's determination is consistent with the applicable regulations and is not arbitrary, capricious, or contrary to law. Ralph M. Martinez, GSBCA 14654-RELO, 98-2 BCA ¶ 30,105.

The claim is denied.

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MARTHA H. DeGRAFF  
Board Judge